UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/194,825	07/29/2011	Barrett Gibson Lyon	FORT-010800	1686

64128 7590 02/01/2017

MICHAEL A DESANCTIS
HAMILTON DESANCTIS & CHA LLP
FINANCIAL PLAZA AT UNION SQUARE
225 UNION BOULEVARD, SUITE 150
LAKEWOOD, CO 80228

EXAMINER	
ABRISHAMKAR, KAVEH	

ART UNIT	PAPER NUMBER
2494	

NOTIFICATION DATE	DELIVERY MODE
02/01/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mdesanctis@hdciplaw.com
docket@hdciplaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BARRETT GIBSON LYON

Appeal 2016-001631
Application 13/194,825[1]
Technology Center 2400

Before MAHSHID D. SAADAT, NORMAN H. BEAMER, and MATTHEW J. McNEILL, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20. We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm.

---

[1] Appellant identifies Fortinet, Inc. as the real party in interest. (Br. 3.)

THE INVENTION

Appellant's disclosed and claimed invention is related to directing clients based on communication format. (Abstract.)

Claim 1, reproduced below, is illustrative of the subject matter on appeal:

> 1. A system to which a Domain Name System (DNS) server is configured to direct requests associated with a content publisher, the system comprising:
>
> a processor configured to:
>
> receive a request from a client capable of communicating via a plurality of supported communication formats, wherein the request is capable of being serviced by a plurality of servers each of which are configured to communicate via a different communication format;
>
> selectively redirect the client in accordance with one or both of (i) a traffic management policy specified by the content publisher and (ii) performance considerations; and
>
> when redirecting the client in accordance with the performance considerations, then the processor being further configured to:
>
> select a communication format from the plurality of supported communication formats based on (i) the different communication formats available via the plurality of servers and (ii) performance expected to be provided to the client as a result of using the selected communication format;
>
> select a server from the plurality of servers that is configured to communicate via the selected communication format; and
>
> redirect the client to the server; and
>
> a memory coupled to the processor and configured to provide the processor with instructions.

REJECTIONS

The Examiner rejected claims 1–3, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Samprathi et al. (US 7,526,562 B1, issued Apr. 28, 2009), Sivasubramanian et al. (US 2009/0327517 A1, pub. Dec. 31, 2009), and Cobelens (US 2007/0168440 A1, pub. July 19, 2007). (Final Act. 3–9.)

The Examiner rejected claims 4–6 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Samprathi, Sivasubramanian, Cobelens, and Blanchet (US 7,657,642 B2, issued Feb. 2, 2010). (Final Act. 10–12.)

The Examiner rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Samprathi, Sivasubramanian, Cobelens, and "Evaluation of IPv6 Auto-Transition Algorithm," IETF Internal-Draft submitted Oct. 24, 2004. (Final Act. 12–14.)

The Examiner rejected claims 10–12, 14–16, and 18–20 under 35 U.S.C. § 103(a) as being unpatentable over Samprathi, Sivasubramanian, Cobelens, and "IPv6 Tunnel Broker with the Tunnel Setup Protocol (TSP)," RFC 5572, submitted Feb. 2010. (Final Act. 14–17.)

ISSUES ON APPEAL

Appellant's arguments in the Brief presents the following issues:[2]

Whether the Examiner erred in finding the combination of Samprathi, Sivasubramanian, and Cobelens teaches or suggests the independent claim 1

[2] Rather than reiterate the arguments of Appellant and the findings of the Examiner, we refer to the Appeal Brief (filed May 9, 2015); the Final Office Action (mailed Oct. 9, 2014); and the Examiner's Answer (mailed Sept. 4, 2015) for the respective details.

limitations, "receive a request from a client capable of communicating via a plurality of supported communication formats [and] select a communication format from the plurality of supported communication formats," and the similar limitations recited in independent claims 13 and 17. (Br. 13–17.)

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments the Examiner erred. We disagree with Appellant's arguments, and we adopt as our own (1) the pertinent findings and reasons set forth by the Examiner in the Action from which this appeal is taken (Final Act. 3–17) and (2) the corresponding findings and reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief (Ans. 3–8). We concur with the applicable conclusions reached by the Examiner, and emphasize the following.

In finding Samprathi, Sivasubramanian, and Cobelens teach or suggest the independent claim limitations at issue, the Examiner relies on the disclosure in Samprathi for handling DNS queries where devices operate under both IPv4 and IPv6 protocols, including dual stack devices. (Final Act. 3–5; Ans. 4, 7; Samprathi Figs. 6A, 6B, col. 1, ll. 9–14, col. 5, ll. 10–37, col. 8, l. 52–col. 9, l. 2.) The Examiner also relies on the disclosure in Cobelens of configuring dual stack devices that support both IPv4 and IPv6 communication formats. (Final Act. 8–9; Ans. 5, 7–8; Cobelens Figs. 4, 5; ¶¶ 33, 34.)

Appellant argues "Samprathi relates to network environments in which IPv4-only and IPv6-only device coexist [and] Samprathi shows no interest in dual stack clients." (Br. 13–14.) Therefore, argues Appellant,

Samprathi does not teach or suggest clients capable of communicating via a plurality of communication formats, as required by the claims. (*Id.*) As evidence of alleged Examiner error, Appellant refers to the Examiner's statement that Samprathi "does not exclude such a scenario [i.e., the claimed capability of a plurality of communications formats]." (Br. 14–15.) Appellant also characterizes the Examiner rejections as based on inherency, and argues lack of support for that ground. (Br. 15.) Finally, Appellant states that Cobelens provides no additional support for the rejections. (Br. 16.)

As the Examiner states, Appellant's arguments are unpersuasive because non-obviousness cannot be established by attacking references individually where, as here, the ground of unpatentability is based upon the teachings of a combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). We find no error in the Examiner's findings, which are unrebutted:

> Samprathi_526 is not limited to networks where 'IPv4-only and IPv6-only device coexist' since Samprathi_526 shows 'interest in dual stack clients,' where, under the broadest reasonable interpretation consistent with the specification, any of Samprathi_526's network devices reads on the term 'client'. . . .

(Ans. 4.) Moreover, as the Examiner states, the finding that Samprathi does not exclude a capability of a plurality of communications formats establishes Samprathi does not teach away from the subject matter of the claims, and the Examiner further states that the rejection does not rely upon inherency, but rather upon the combined teachings of the cited references. (Ans. 6.)

Appellant's assertions in regard to Cobelens are unpersuasive as conclusory because merely reciting the language of a particular claim and asserting the cited prior art reference does not teach or suggest the claim

limitation, without more, fails to constitute a separate issue of patentability. *See* 37 C.F.R. § 41.37(c)(1)(iv); *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011). We are not persuaded of error in the Examiner's finding with respect to the disclosure of Cobelens and its combination with Samprathi:

> In Cobelens, a dual-stack device ('client') initiates communication by, for example, multi casting both IPv4 and IPv6 query packets over network to discover an appropriate responding device (server) . . . where it would be appreciated by one of ordinary skill in the art to combine the inventions of Cobelens and Samprathi_562 at least to come up with a solution where 'a request [is] from a client capable of communicating via a plurality of supported communication formats' to allow discovery to be done by dual-stack devices, as taught in Cobelens, in the environment supporting IPv4, IPv6, and dual-stack devices, as taught in Samprathi_526 as well as Cobelens.

(Ans. 5.)

CONCLUSION

For the reasons stated above, we sustain the obviousness rejections of independent claims 1, 13, and 17 over Samprathi, Sivasubramanian, and Cobelens. We also sustain the obviousness rejections of claims 2 and 3 over Samprathi, Sivasubramanian, and Cobelens, which rejections are not argued separately with particularity. With respect to the remaining rejections of claims 4–12, 14–16, and 18–20 over the various combinations of references as above listed, Appellant repeats the arguments made with respect to the independent claims. (Br. 17–21.) Therefore, we sustain those rejections for the same reasons as stated above.

DECISION

We affirm the Examiner's rejections of claims 1–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED